

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5887 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements? No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy No :  
of the judgement?
4. Whether this case involves a substantial question : YES  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No :

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MOHANBHAI BHALABHAI BHOI

Versus

OFFICER ON SPECIAL DUTY LAND ACQUISITION - UNIT NO.1

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Appearance:

MR GM AMIN for Petitioners

MR HL JANI, AGP for respondents

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CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/08/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

Rule. Mr. H.L.Jani, learned A.G.P. waives service of notice of rule on behalf of the respondents. Having regard to the facts of the case and in view of the joint request made by the learned advocates appearing for the parties, the petition is taken-up for final hearing

today.

By means of filing this petition under Article 226 of the Constitution, the petitioners have prayed to issue an appropriate writ, direction or order calling upon the respondents to redetermine compensation in respect of land bearing Survey No.47 situated in the sim of village Nikol/Kathwada, admeasuring 22,663 sq.mts. belonging to the petitioners as contemplated by section 28-A of the Land Acquisition Act, 1894. The petitioners have further prayed to direct the respondents to disburse the amount of compensation which may be redetermined by the respondents, to the petitioners with interest at the rate of 18% per annum.

2. The petitioners were owners of land bearing survey no.47 situated in the sim of village Nikol/Kathwada, admeasuring 22,663 sq.mts. The land was acquired for the public purpose of expansion of G.I.D.C. at Nikol/Kathwada pursuant to publication of preliminary notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) on November 15, 1973. By the said notification, lands of other persons were also acquired. Award under section 11 of the Act was made by respondent no.1 i.e. Officer on Special Duty (Land Acquisition), Unit No.I, Ashram Road, Ahmedabad on September 20, 1986. The other claimants who were dissatisfied with offer of compensation made by respondent no.1, had sought references, but the petitioners had not filed any application under section 18 of the Act asking the Land Acquisition Officer to refer their matter to the Court for determination of appropriate compensation. In Land Reference Case No. 1401/87 and others, reference court by judgment and award dated February 26, 1999 has enhanced compensation payable to the claimants. Under the circumstances, the petitioners filed application under section 28-A of the Act on May 12, 1999, a copy of which is produced at Annexure-A to the petition. The petitioners were thereafter served with notice dated June 14, 1999, which was issued by respondent no.1. By the said notice, petitioners were asked to remain present in the Office of respondent no.1 on June 19, 1999. A copy of the said notice is produced by the petitioners at Annexure-B to the petition. The petitioners have claimed that after receipt of the notice, their advocate had given reply on June 19, 1999, a copy of which is produced at Annexure-C to the petition. Thereafter no further steps were taken by respondent no.1, but respondent no.1 informed the petitioners that the judgment delivered in Land Reference Case No. 1401/87 is referred to the Legal Department,

Gandhinagar and as Legal Department has not taken any decision whether to file appeal or not against the said judgment, the application submitted by the petitioners under section 28-A of the Act cannot be decided. A copy of the letter dated July 23, 1999 received by the petitioners from respondent no.1 is produced at Annexure-E to the petition. The petitioners have claimed that they are entitled to redetermination of compensation under section 28-A of the Act in the light of the judgment rendered by the District Court in Land Reference Case No.1401/87 and inaction on the part of respondent no.1 in not deciding the said application on the ground that opinion to file appeal or to acquiesce the judgment rendered in Land Reference Case No.1401/87 is not received from the Legal Department, is illegal. Under the circumstances, the petitioners have filed present petition and claimed reliefs to which reference is made earlier.

3. Though the respondents are duly served, no affidavit-in-reply is filed controverting the averments made in the petition.

4. From the averments made in the petition, it is evident that by judgment and award dated February 26, 1999, reference Court has enhanced compensation in the case of other claimants whose lands were also acquired pursuant to publication of preliminary notification under section 4(1) of the Act on November 15, 1973. As the petitioners had not filed any application under section 18 of the Act requiring the Land Acquisition Officer to refer the matter to District Court for determination of compensation, the petitioners are entitled to file application under section 28-A of the Act for redetermination of compensation. Even if the award passed by the reference Court is challenged in appeal, the petitioners would be entitled to pursue their application filed under section 28-A of the Act and, therefore, we are of the opinion that respondent no.1 could not have deferred decision on application submitted by the petitioners under section 28-A of the Act indefinitely on the ground that appropriate decision to prefer an appeal is not taken by the Legal Department. Having regard to the facts of the case, we are of the opinion that interest of justice would be served if respondent no.1 is directed to decide the application submitted by the petitioners under section 28-A of the Act within reasonable time.

For the foregoing reasons, the petition partly succeeds. Respondent no.1 is directed to decide the

application submitted by the petitioners on May 12, 1999 under section 28-A of the Act as early as possible and preferably within 3 months from the date of production of certified copy of this judgment. Rule is made absolute to the extent indicated hereinabove, with no order as to costs.

Office is directed to send copy of this judgment to respondent no.1 immediately. It will also be open to the petitioners to produce certified copy of this judgment before respondent no.1 for necessary compliance.

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(patel)